

A **Arab Malaysian Finance Bhd v
Suhaimi bin AW Mohamed**

HIGH COURT (TEMERLOH) — CIVIL APPEAL NO 11-89 OF 1999
MOHD HISHAMUDIN J

B 14 MARCH 2000

Hire Purchase — Breach of agreement — Claim for recovery of money under hire purchase agreement — Notice of repossession not served on hirer — Whether owner must take steps to repossess before cause of action under agreement can arise — Hire Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976 — Hire Purchase Act 1967 ss 16 and 43

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The plaintiff brought an action against the defendant under the Hire Purchase Act 1967 ('the Act'). The summons was served on the defendant by way of substituted service. The defendant did not serve any notice of appearance or a defence, nor did he appear in court. The magistrate rejected the plaintiff's oral application for judgment in default of appearance and dismissed the plaintiff's action on the ground that the plaintiff had not taken possession of the vehicle and in fact had not served the notice of repossession on the defendant. The plaintiff appealed.

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Held, dismissing the appeal:

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(1) The statement of claim ought to be struck out on the grounds that the statement of claim disclosed no reasonable cause of action. The magistrate had the power to dismiss the action by virtue of O 14 r 21(1)(a) of the Subordinate Courts Rules 1980 (see p 153G).

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(2) In order to show that he had a cause of action, the plaintiff in his statement of claim must show, inter alia, that he had duly complied with ss 16 and 43 of the Act and reg 3 of the Hire Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976. The statement of claim clearly did not contain the requisite particulars and thus it did not disclose a reasonable cause of action. It was insufficient that the notice under the Fourth Schedule of the Act and under reg 3 merely to be issued; these notices had to be served to the hirer with particulars as to the date and mode of service. The statement of claim also did not mention anything about repossession (see p 156F-G).

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(3) Although the Act does not expressly say so, nevertheless, judging from the whole provisions and scheme of the Act, a plaintiff must for the purpose of his civil claim to recover money under a hire purchase agreement take steps to repossess the vehicle first in so far as repossession is practically possible (see pp 156C-D, 157C-D).

[Bahasa Malaysia summary]

Plaintif telah memulakan tindakan terhadap defendan di bawah Akta Sewa Beli 1967 ('Akta tersebut'). Saman telah disampaikan ke atas defendan melalui penyampaian ganti. Defendan tidak menyampaikan apa-apa notis kehadiran atau pembelaan, dan beliau tidak hadir ke mahkamah. Majistret telah menolak permohonan lisan plaintif untuk penghakiman ingkar ketidakhadiran dan menolak tindakan plaintif atas alasan bahawa plaintif tidak mengambil milikan kenderaan tersebut dan pada hakikatnya tidak menyampaikan notis pemilikan semula ke atas defendan. Plaintif telah membuat rayuan.

Diputuskan, menolak rayuan tersebut:

- (1) Pernyataan tuntutan tersebut sepatutnya dibatalkan atas alasan bahawa pernyataan tuntutan tersebut tidak menunjukkan sebarang kausa tindakan yang munasabah. Majistret mempunyai kuasa untuk menolak tindakan tersebut menurut A 14 k 21(1)(a) Kaedah-Kaedah Mahkamah Rendah 1980 (lihat ms 153G).
- (2) Bagi tujuan menunjukkan bahawa beliau mempunyai satu kausa tindakan, plaintif di dalam pernyataan tuntutan beliau hendaklah menunjukkan, antara lain, bahawa beliau telah memenuhi sepenuhnya ss 16 dan 43 Akta tersebut dan peraturan 3 Peraturan-Peraturan Sewa Beli (Pemilikan Semula dan Penyelenggaraan Rekod oleh Pemilik) 1976. Pernyataan tuntutan tersebut jelas tidak mengandungi butir-butir yang dikehendaki dan oleh itu tidak menunjukkan satu kausa tindakan yang munasabah. Adalah tidak mencukupi bahawa notis di bawah Jadual Keempat Akta tersebut dan di bawah peraturan 3 hanya dikeluarkan; notis-notis tersebut sepatutnya disampaikan kepada penyewa dengan butir-butir seperti mana pada tarikh dan cara penyampaian tersebut. Pernyataan tuntutan tersebut juga tidak menyatakan apa-apa tentang pemilikan semula (lihat ms 156F-G).
- (3) Walaupun Akta tersebut tidak menyatakan dengan jelas, namun begitu, setelah meneliti daripada keseluruhan peruntukan-peruntukan dan skema Akta tersebut, seorang plaintif mestilah bagi tujuan tuntutan sivil beliau mendapat kembali wang di bawah satu perjanjian sewa beli mengambil langkah untuk memiliki semula kenderaan tersebut terlebih dahulu setakat pemilikan semula adalah berkemungkinan praktikal (lihat ms 156C-D, 157C-D).]

Notes

For cases on breach of a hire purchase agreement generally, see *7 Mallal's Digest* (4th Ed, 1998 Reissue) paras 2974-3000.

A Cases referred to

Butterworth Used Cars Sdn Bhd lwn Mayban Finance [1991] 3 CLJ 1721 (refd)
Krishnamurthy & Anor v Malayan Finance Corp Bhd [1986] 2 MLJ 134 (refd)

B**Legislation referred to**

Hire Purchase Act 1967 ss 16, 18, 20, 43, 43A
Hire Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976 reg 3
C Subordinate Courts Rules 1980 O 14 r 21(1)(a), O 46

Appeal from: Civil Action No 72–55 of 1999 (Magistrate’s Court, Temerloh)

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Francis Tan (Rosni Francis Tan & Ho) for the appellant.

Mohd Hishamudin J. : This is an appeal by the appellant/plaintiff against the decision of the learned magistrate of Temerloh. The learned magistrate had, on 19 October 1999:

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- (a) dismissed the oral application of the plaintiff for judgment in default of appearance; and
- (b) ordered that the plaintiff’s action be dismissed.

The summons was filed by the plaintiff at the Magistrate’s Court Temerloh on 4 March 1999. The action was based on a hire-purchase agreement governed by the Hire Purchase Act 1967 (‘the Act’). The statement of claim reads:

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- (1) plaintiff adalah sebuah Syarikat Kewangan Berlesen yang ditubuhkan di Malaysia dan mempunyai pejabat berdaftaranya di Tingkat 22, Bangunan Arab-Malaysian Finance, No 55, Jalan Raja Chulan, 50200 Kuala Lumpur.

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- (2) Alamat penyampaian untuk defendan ialah No 28, Kampung Sentosa, 26500 Maran, Pahang Darul Makmur.

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- (3) Melalui satu Perjanjian Sewa-Beli secara bertulis No 056-401-0009758-7 bertarikh pada 22 Januari 1997 (‘Perjanjian tersebut’) plaintiff telah menyewa beli kepada defendan satu unit kenderaan PROTON SAGA 1.3S SALOON dengan nombor pendaftaran WBW 8461 No Chasis: C21ASNB187884 dan No Injin: 4G13PAE9983 (‘kenderaan tersebut’) dengan jumlah sewa-beli sebanyak RM33,600 yang kena dibayar secara 60 ansuran bulanan sebanyak RM560 bermula dari 22 Februari 1997 dan ansuran terakhir sebanyak RM560 (‘ansuran tersebut’). Jumlah sewa beli sebanyak RM33,600 yang kena dibayar telah ditolak dari wang pendahuluan sebanyak RM10,500 yang telah dibayar oleh defendan.

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- (4) Di bawah perjanjian tersebut, defendan inter alia bersetuju untuk membayar kepada plaintiff:

- (i) Faedah lewat bayar pada kadar 8% setahun berdasarkan kiraan harian dikenakan ke atas mana-mana ansuran yang tidak dijelaskan mengikut Jadual Pembayaran;
 - (ii) Kos guaman yang berhubung dengan pelaksanaan perjanjian tersebut.
- (5) Defendan telah gagal untuk membayar ansuran tersebut dan tunggakan ansuran yang masih terhutang berjumlah RM2,419.78 (termasuk faedah dan kos-kos yang telah dikira setakat 15 Disember 1998).
- (6) Walaupun plaintif melalui peguam mereka Tetuan Rosni, Francis Tan & Ho, telah memberi notis kepada defendan bertarikh 21 Disember 1998 supaya menjelaskan pembayaran tunggakan ansuran sebanyak RM2,419.78 tersebut tetapi defendan telah enggan/gagal untuk menjelaskannya.
- (7) Melalui notis yang sama juga plaintif telah menamatkan pinjaman tersebut dan menuntut daripada defendan pembayaran keseluruhan baki pinjaman sebanyak RM20,011.91 tersebut tetapi defendan telah enggan/gagal untuk menjelaskannya.
- (8) Oleh kerana defendan telah gagal/enggan untuk menjelaskan ansuran tersebut plaintif telah mengeluarkan Notis Tentang Niat Untuk Mengambil Semula Hak Milik melalui Jadual Keempat (selaras dengan s 16 Akta Sewa Beli 1967) bertarikh 23 September 1998 dan diikuti dengan Notis Tujuh (7) hari di bawah s 3 Peraturan Sewa Beli 1967 bertarikh 7 Oktober 1998. Akan tetapi defendan masih enggan atau gagal mematuhi.
- (9) Plaintif telah mengalami kerugian yang berjumlah RM20,011.91 dikira sehingga 15 Disember 1998 dan ianya adalah seperti berikut:
- Butir-butir di bawah A 46 k 3*
Kaedah-Kaedah Mahkamah Rendah 1980
 ...
- (10) Oleh kerana itu plaintif memohon perintah terhadap defendan secara berse sama dan berasingan daripada Mahkamah Yang Mulia ini seperti berikut:
- (a) ...

The return date stated in the summons was 30 March 1999. The plaintiff, however, was not able to serve the summons on the defendant and they applied for, and obtained from the court on 27 May 1999, an order to serve the summons by way of substituted service, and the return day was amended to 10 August 1999. The plaintiff succeeded in serving the summons by way of substituted service. The defendant, however, did not serve on the plaintiff any notice of appearance or a defence; nor did he appear in court on 10 August 1999. On this date, the plaintiff's counsel informed the court (presumably upon being asked by the learned magistrate) that the plaintiff had not taken possession of the vehicle in question and orally applied for judgment in default of appearance. The learned magistrate rejected the application and directed the counsel to clarify from the plaintiff as to whether or not they had taken possession of the vehicle. The case was fixed for mention on 19 October 1999. On this date, the defendant was again absent (and still no notice of

A appearance or defence served). The plaintiff's counsel confirmed to the court that the plaintiff had not taken possession of the vehicle, and once again orally applied for judgment in default of appearance. As I have said at the earlier part of this judgment, the learned magistrate rejected the application and, at the same time, dismissed the action. The decision led to this appeal.

B The learned magistrate in his grounds of judgment gives the following grounds for dismissing the action (I shall only refer to the relevant portions):

Alasan-alasan mahkamah berbuat demikian adalah seperti berikut:

C (1) Mahkamah berpendirian perjanjian sewa beli secara dasarnya berbeza dengan perjanjian pembiayaan kewangan yang lain. Di dalam perjanjian sewa beli, barang masih lagi di dalam milikan pemberi pinjaman walaupun kawalannya berada pada peminjam (penyewa). Jadi sekiranya berlaku sebarang kemungkiran bagi pihak penyewa, pemberi pinjaman sepatutnya mengambil semula kawalan barang-barang berkenaan.

D (2) ...

E (3) Tiada langsung peruntukan di dalam Akta Sewa Beli 1967 yang membolehkan pihak syarikat kewangan menuntut kesemua wang pembiayaan tanpa menarik balik kenderaan yang terbabit. Syarikat kewangan sepatutnya menarik semula milikan barang-barang dan menjualnya dengan harga terbaik. Hanya baki tertunggak selepas ditolak harga jualan terbaik boleh dituntut.

F (4) Di dalam kes ini plaintif tidak ada langsung mengemukakan apa-apa bukti bahawa Notis Tentang Niat Untuk Mengambil Semula Hak Milik Melalui Jadual Keempat selaras dengan s 16 Akta Sewa Beli 1967 [sic] [telah] diserahkan kepada defendan.

Encik Francis Tan, the learned counsel for the appellant/plaintiff, submits that the learned magistrate had no power to dismiss the action.

G In the present case, I agree with the decision of the learned magistrate in dismissing the action. In my judgment, the statement of claim ought to be struck out on the grounds that the statement of claim discloses no reasonable cause of action and the action dismissed. The learned magistrate had the power to do so by virtue of O 14 r 21(1)(a) of the Subordinate Courts Rules 1980 ('the SCR'). This provision states:

H Striking out pleadings and indorsements.

I (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any summons or anything in any pleading or in the endorsement, on the ground that —
(a) it discloses no reasonable cause of action or defence, as the case may be; or

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and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

Apart from the statement of claim, it is also to be recalled that the plaintiff's counsel, in the course of the proceeding, had confirmed to the magistrate that the plaintiff did not effect repossession of the vehicle.

In order to show that he has a cause of action, the plaintiff in his statement of claim must show, inter alia, that he has duly complied with ss 16 and 43 (or 43A as the case may be) of the Act and reg 3 of the Hire Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976 ('the Regulations'). Section 16 provides:

Notices to be given to hirer when goods repossessed

- (1) Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of installments unless there had been two successive defaults of payments or a default in respect of the last payment and he has served on the hirer a notice, in writing, in the form set out in the Fourth Schedule and the period fixed by notice has expired, which shall not be less than twenty-one days after the service of the notice.
- (1A) Where a hirer is deceased, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless there has been four successive defaults of payments.
- (2) An owner need not comply with sub-s (1) if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.
- (3) Within twenty-one days after the owner has taken possession of goods that were comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form set out in the Fifth Schedule.
- (4) Where the owner takes possession of goods that were comprised in a hire-purchase agreement he shall deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods or, if the hirer is not present at that time, send to the hirer immediately after taking possession of the goods a document acknowledging receipt of the goods.
- (5) The document acknowledging receipt of the goods, required under subsection (4) shall set out a short description of the goods and the date on which, the time at which and the place where the owner took possession of the goods.
- (6) If the notice required by sub-s (3) is not served, the rights of the owner under the hire-purchase agreement thereupon cease and determine; but if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notice had been duly given.
- (7) Before and when exercising the power of taking possession the owner or his servant or agent shall, in addition to the provisions of this Act, comply with any regulations relating to the manner of taking possession as may

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A be prescribed.

In this judgment, I shall refer to the notice referred to in sub-s (1) above as 'the Fourth schedule notice', and the notice referred to in sub-s (3) as 'the Fifth Schedule notice'.

Regulation 3 of the Regulations stipulates:

B Notice to hirer

(1) An owner shall in addition to the notice in the form set out in the Fourth Schedule of the Act send to the hirer a notice informing the hirer that the owner intends to take possession of the goods comprised in the hire-purchase agreement.

C (2) Such notice as aforesaid shall be sent not earlier than fourteen days after the service of the notice in the form set out in the Fourth Schedule of the Act and shall be sent by registered post.

I shall, in this judgment, refer to the notice referred to in the above reg 3 as 'the reg 3 notice'.

D Sections 43 and 43A of the Act prescribe how service of the notices mentioned in s 16 and reg 3 is to be effected. Section 43 states:

Service of notices

Any notice or document required or authorized to be served on or given or sent to an owner or hirer under this Act may be served or given or sent —

E (a) by delivering it to him personally; or
(b) (Deleted by Act A813);
(c) by posting it by registered post addressed to' him at his last known place of abode or business.

F Section 43A provides:

Substituted service

G (1) Where it appears that it is impracticable for any reason to serve a notice or document required or authorized to be served on or given or sent to an owner or hirer in accordance with s 43, a court or a magistrate may, on application by an owner or hirer, as the case may be, make an order for substituted service of the notice or document.

(2) An application for an order for substituted service must be made by notice supported by an affidavit stating the facts on which the application is founded.

H (3) Substituted service of the notice or document is effected by taking such steps as the court may direct to bring the notice of the document to the attention of the person to be served.

I In my judgment, in a civil action for recovery of money arising out of a hire-purchase agreement, in the light of the provisions of ss 16 and 43 (or 43A as the case may be) of the Act and reg 3 of the Regulations, the plaintiff, in his statement of claim, apart from showing that there has been compliance with O 46 of the SCR, must also state particulars showing clearly that there has been compliance with such provisions of the Act and

Regulations. The requisite particulars are, inter alia, regarding the following: A

- (a) whether the fourth Schedule notice had been 'served on the hirer, including the date and mode of service;
- (b) whether the reg 3 notice had been served on the hirer, including the date and mode of service; B
- (c) whether the vehicle in question had been repossessed, including the date of repossession; and
- (d) whether the Fifth Schedule notice had been served on the hirer and guarantor, including the date and mode of service. C

It is my judgment that if the above particulars are not stated in the statement of claim then the statement of claim does not disclose a reasonable cause of action. C

Now, in the present case, in the light of the provisions of ss 16 and 43 (or 43A as the case may be) of the Act and reg 3 of the Regulations, the shortcomings in the statement of claim are glaring and substantial. The statement of claim clearly does not contain the above particulars (a)–(d). D
With reference to para 8 of the statement of claim which states:

Oleh kerana defendan telah gagal/enggan untuk menjelaskan ansuran tersebut plaintif telah mengeluarkan Notis Tentang Niat Untuk Mengambil Semula Hak Milik melalui Jadual Keempat (selaras dengan seksyen 16 Akta Sewa Beli 1967) bertarikh 23 September 1998 dan diikuti dengan Notis Tujuh (7) hari di bawah s 3 Peraturan Sewa Beli 1967 bertarikh 7 haribulan. E

This being the only paragraph in the whole of the statement that touches on the Fourth Schedule notice and the reg 3 notice — there is no compliance even with particulars (a) and (b), let alone particulars (c) and (d); for it is not sufficient for the fourth schedule notice and the reg 3 notice merely to be issued (mengeluarkan): these notices had to be served (diserahkan) to the hirer, and with particulars as to the date and mode of service. Great care must be taken when drafting statements of claim. Pleadings are not meant to be mere formalities. It is to be observed that the statement of claim does not mention anything about repossession. F G

I am quite certain that the learned magistrate had in mind the absence of these particulars in the statement of claim when, during the proceedings, he queried counsel regarding the repossession of the vehicle and when, in his grounds, he touches on the questions of repossession and service of the fourth Schedule notice, although his usage of the word 'bukti' in para four of his grounds of judgment is rather unfortunate. The appropriate word should have been 'pernyataan'. H

En Francis Tan submits that repossession of the vehicle is not an essential requirement in a civil claim against the hirer for money due under the hire-purchase agreement. Learned counsel argues that the plaintiffowner can sue first for the money due under the hire-purchase I

- A agreement and repossess the vehicle later. He cites s 20 of the Act that reads:

Power of court to vary existing judgments or orders when goods are repossessed

- B In any legal proceedings in relation to a hire-purchase agreement, after the owner has taken possession of the goods, the court before which the proceedings are brought may vary or discharge any judgment or order of any court against the hirer for the recovery of money so far as necessary to give effect to s 18.

- C Learned counsel also refers to *Butterworth Used Cars Sdn Bhd lwn Mayban Finance* [1991] 3 CLJ 1721 and *Krishnamurthy & Anor v Malayan Finance Corp Bhd* [1986] 2 MLJ 134. With respect, I cannot accept the argument. In my view, although the Act does not expressly say so, nevertheless, judging from the whole provisions and scheme of the Act, a plaintiff must for the purpose of his civil claim to recover money under a hire-purchase agreement take steps to repossess the vehicle first insofar as repossession is practically possible. I find neither s 20 nor the two cases cited supports the learned counsel's contention.
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Section 20 is inter-related with s 18. This section reads:

Hirer's rights and immunities when goods repossessed

- E (1) Where the owner takes possession of any goods under s 16 —
- (a) the hirer may within twenty-one days after the service on him of the notice referred to in s 16(3) by giving to the owner a notice in writing signed by the hirer or his agent —
- (i) require the owner to re-deliver to or to the order of the hirer (subject to the compliance by the hirer with the provisions of s 19) the goods that have been repossessed; or
- F (ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first mentioned notice;
- (b) the hirer may recover from the owner —
- G (i) if the value of the goods at the time of the owner so taking possession thereof is less than the net amount payable but the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement exceeds the net amount payable — the difference between that total and the net amount payable;
- H or
- (ii) if the value of the goods at the time of the owner so taking possession thereof is equal to or greater than the net amount payable — the total of that value and the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, less the net amount payable.
- I (2) Where the owner takes possession of any goods comprised in a hire-purchase agreement the owner is not entitled to recover any sum

- (whether under a judgment or order or otherwise) which if added together with —
- (a) the value of the goods at the time of the owner so taking possession thereof; and
 - (b) the amount paid or provided, whether by cash or other consideration, by or on behalf of the hirer under the agreement, exceeds the net amount payable in respect of the goods.
- (3) For the purposes of this section —
- (a) the net amount payable is the total amount payable less the statutory rebates for terms charges and insurance as at the time of the owner taking possession of the goods; and
 - (b) the value of any goods at the time of the owner taking possession thereof is —
 - (i) the best price that could be reasonably obtained by the owner; or
 - (ii) if the hirer has introduced a person who has bought the goods for cash, the amount paid by that person, less —
 - (iii) the reasonable costs incurred by the owner of and incidental to his taking possession of the goods;
 - (iv) any amount properly expended by the owner on the storage, repair, or maintenance of the goods; and
 - (v) (whether or not the goods have subsequently been sold or disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods.
- (4) Where an owner takes possession of any goods comprised in a hire-purchase agreement and intends to sell them —
- (a) by public auction, he shall be required to serve or cause to be served on the hirer a copy of the notice of such public auction not less than fourteen days from the date the said auction is to be held; or
 - (b) otherwise than by public auction, he shall be required to give the hirer an option to purchase the goods at the price at which he intended to sell them if that price is less than the owner's estimate of the value of the goods repossessed as stated in the notice referred to in s 16(3), and if he fails to comply with such requirement he shall be guilty of an offence under this Act.
- (5) No amount is recoverable by the hirer under this section except where the owner has failed to serve on the hirer notice as required by s 16(3) unless —
- (a) the hirer, within twenty-one days after the owner has served a notice as required by s 16(3), gives to the owner notice in writing —
 - (i) setting out the amount claimed under the provisions of this section and the amount that is claimed by the hirer to be the value of the goods at the time of the owner taking possession thereof; and

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- A (ii) signed by the hirer or his advocate and solicitor or agent;
and
(b) proceedings for the recovery of the amount so claimed under the provisions of this section are commenced not later than three months after the giving by the hirer to the owner of the notice referred to in para (a).

- B (6) If, before the proceedings referred to in sub-s (5) are commenced by the hirer, the owner, serves an offer in writing on the hirer to pay any amount in satisfaction of the claim by the hirer under this section, the owner, in the proceedings, is entitled to pay into court the amount so offered and, upon so doing, is entitled to the same rights as he would have had if that amount had been tendered to the hirer before the proceedings were commenced:

C Provided that no such right shall be available to the owner in any proceedings by the hirer to recover the amount so offered or any lesser amount if the hirer, before commencing the proceedings, notifies the owner in writing of the acceptance by the hirer of the amount so offered.

- D I do not propose to indulge in any analysis of ss 18 and 20. For I do not think that it is necessary. All that I wish to say is this. I concede that s 20 presupposes an existing judgment or order against the hirer for the recovery of money due under a hire-purchase agreement, which a court pursuant to a legal proceeding under this section may discharge or vary in order to give effect to the rights of the hirer under s 18. However, I fail to see how this section (s 20), in particular, the reference to an existing judgment or order, can be interpreted to imply that it is not necessary for an owner to first repossess the vehicle in order to recover money due under a hire-purchase agreement.

- F As to the cases cited, in *Butterworth Used Cars* there was, by agreement of parties, only one issue before the court: who was the owner of the vehicle in question. *Krishnamurthy* does not directly concern the Hire-Purchase Act.

- G I feel that this judgment is incomplete if I do not somewhat touch on this question: what if for some plausible reason repossession of the vehicle is not possible? This is a pertinent question. The Act is silent on the question as to what an owner, who is desirous of commencing an action against a hirer for money due under the hire-purchase agreement, should do where repossession is genuinely not possible (I do not propose to cite an example of such a situation which, I believe, is rare in practice, but I must point out that an owner cannot claim that repossession is not possible in a situation where the hirer or some third party refuses or fails to deliver to him the vehicle in question; for in such a situation the owner should endeavour to recover the vehicle by seeking the assistance of the court pursuant to s 42 of the Act). In the present case, however, I need not attempt to venture into this area. Indeed, it is not proper for me to do so as it is not an issue before this court. For, in the instant case, it is not stated in the statement of claim of the plaintiff that repossession was not possible. All that I can say with some measure of confidence is that, in such a situation, it must

surely be the law that the owner can still pursue his claim against the errant hirer. **A**

The appeal is dismissed.

Appeal dismissed.

Reported by Jafisah Jaafar **B**

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